

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated April 15, 2014 which found that the portion of the backdated family bonus payment the appellant received, for which the family unit was previously provided with a supplement of \$504.51, must be deducted as unearned income from the appellant's assistance for the month of April 2014, pursuant to Section 24 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR).

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Sections 1, 24, 59 and Schedules A and B

PART E – Summary of Facts

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

The evidence before the ministry at the time of the reconsideration decision included the appellant's Request for Reconsideration dated March 31, 2014 with a copy of his April 2014 cheque stub attached.

In his Request for Reconsideration, the appellant wrote that:

- He was not aware of any requirement to repay the advance received in November 2013. He does not recall signing any promissory note.
- The lump sum he eventually received was back pay and spent before he got it.
- Taking over \$500 off a single month's cheque has caused undue hardship and made him unable to pay rent. His family, which includes small children, is now subject to eviction.
- He is fighting cancer and has no other income presently.
- They have a young child so his spouse is not working.
- They have no savings or reserves.
- If repayment is required, it should be deducted in accordance with an amount that will not cause harm to his family each month.
- He would like the portion (\$504.51) reimbursed to him as \$1,518.09 is not enough to sustain a family with children without undue hardship.
- His April 2014 cheque stub indicates that he receives \$2,042.60 as a total allowance, with \$750 as his shelter portion. He declared income of \$1,828.67 and \$504.51 was deducted. His total remaining cheque amount is \$1,518.09 which also reflects \$20 deducted for "other deductions."

In his Notice of Appeal dated April 16, 2014, the appellant expressed his disagreement with the ministry reconsideration decision and wrote that:

- The decision has left his family with a crisis, facing eviction.
- He was not expecting a lump sum of over \$500 to be deducted at once and his landlady only got half of her rent.
- They got an eviction notice.

The ministry relied on its reconsideration decision. The facts included:

- The appellant is a recipient of disability assistance with a spouse and dependent children.
- On November 15, 2013, the appellant received \$504.51 as a supplement for his delayed family bonus.
- On March 20, 2014, the family bonus was processed and the appellant received \$459.97 as his scheduled monthly amount plus \$1,368.70 in backdated family bonus, for a total of \$1,828.67.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision, which found that the portion of the backdated family bonus payment the appellant previously received from the ministry must be deducted as unearned income from the appellant's assistance, pursuant to Section 24 of the EAPWDR, was reasonably supported by the evidence or is a reasonable application of the applicable enactment in the appellant's circumstances.

Section 24 of the EAPWDR provides that:

Amount of disability assistance

24 Disability assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than

- (a) the amount determined under Schedule A, minus
- (b) the family unit's net income determined under Schedule B.

Schedule A of the EAPWDR sets out the total amount of disability assistance payable as the sum of the monthly support allowance for a family unit matching the family unit of the applicant or recipient plus the applicable shelter allowance. In calculating the net income of a family unit under Schedule B, various exemptions from income are provided for but, otherwise, all earned and unearned income must be included.

Section 1 of Schedule B of the EAPWDR provides as follows:

Deduction and exemption rules

1 When calculating the net income of a family unit for the purposes of section 24 (b) [amount of disability assistance] of this regulation,

(a) the following are exempt from income:

- (i) any income earned by a dependent child attending school on a full-time basis;
- (ii) the basic family care rate paid for foster homes;
- (iii) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 2 (c).]
- (iv) a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule;
- (v) the basic child tax benefit;

(b) any amount garnished, attached, seized, deducted or set off from income is considered to be income, except the deductions permitted under sections 2 and 6,

(c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3, 3.1 and 4, and

(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7, 7.1, 7.2 and 8.

Section 10 of Schedule B of the EAPWDR provides as follows:

Portion of backdated family bonus treated as unearned income

10 (0.1) In this section:

"backdated family bonus payment" , in relation to a child benefits cheque, means the portion of the cheque, if any, attributable to the family bonus for one or more calendar months preceding the calendar month in which the cheque is issued;

"supplement" means a supplement referred to in section 59 [supplement for delayed, suspended or cancelled family bonus] of this regulation.

- (1) If a person in the applicant's or recipient's family unit receives a backdated family bonus payment and all or part of the payment is attributable to one or more calendar months for which the family unit was also provided with a supplement, the lesser of the following amounts must be treated as unearned income:
 - (a) the portion of the backdated family bonus payment that is attributable to those calendar months for which the family unit was provided with a supplement;
 - (b) the sum of the supplements that are attributable to those calendar months for which the family unit received the backdated family bonus payment.
- (2) For the purposes of subsection (1), an amount that, under the Income Tax Act (British Columbia) or the Income Tax Act (Canada), is deducted or set off from a family bonus is considered to have been paid to a person in the applicant's or recipient's family unit.
- (3) Subsection (1) does not apply to an amount included in that portion of a child benefits cheque attributable to family bonus
 - (a) to replace a lost or stolen cheque for which an amount was advanced under section 58 [advance for lost or stolen family bonus cheque] of this regulation, or
 - (b) to replace a cheque for which no amount was advanced under section 58 [advance for lost or stolen family bonus cheque] of this regulation if the replacement is received in the calendar month following the calendar month for which the lost or stolen cheque was issued.
 - (c) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 2 (d).]

Section 59 of the EAPWDR provides that:

Supplement for delayed, suspended or cancelled family bonus

- 59 (1) In this section, "maximum national child benefit supplement", in relation to a family unit, means the amount the family unit would receive for a calendar month as the national child benefit supplement if
- (a) the family unit were entitled to receive the national child benefit supplement for the calendar month, and
 - (b) the income of the family unit, for the purposes of calculating the national child benefit supplement, were zero.
- (2) The minister may provide a supplement to or for a family unit that is eligible for disability assistance or hardship assistance if
- (a) payment of the family bonus for a calendar month to a person in the family unit is delayed, suspended or cancelled under the Income Tax Act (Canada) or the Income Tax Act (British Columbia) for any reason other than that
 - (i) the person refuses to apply for the family bonus,
 - (ii) the person refuses to provide information necessary to determine eligibility for the family bonus, or
 - (iii) the person refuses to accept the family bonus, and
 - (b) the minister considers that the supplement is immediately needed for basic needs of food, clothing or shelter.
- (3) The amount that may be provided for a calendar month as a supplement under subsection (2) is equal to
- (a) the maximum national child benefit supplement, minus
 - (b) the family bonus, if any, received by the family unit for the preceding calendar month.

Ministry's position

The ministry's position is that the portion of the backdated family bonus payment the appellant received, for which the family unit was previously provided with a supplement of \$504.51, must be deducted as unearned income from the appellant's assistance for the month of April 2014, pursuant to Section 24 of the EAPWDR. The ministry stated that when calculating the net income of a family unit for the purposes of Section 24 of the EAPWDR, a family bonus is exempt except the portion treated as "unearned income" under Section 10(1) of Schedule B of the EAPWDR. The ministry stated that the appellant received \$504.51 as a supplement for his delayed family bonus in November 2013 and, in March 2014, he received the backdated family bonus payment. The ministry stated that any portion of the backdated payment received that is attributable to a calendar month in which the ministry provided a supplement (advance) must be treated as unearned income and deducted from assistance, pursuant to sections 24 of the EAPWDR.

Appellant's position

The appellant acknowledged that he was in receipt of an advance for family bonus in November 2013 but he argued that "we were not aware of any requirement to repay the advance we received in November 2013 and I do not recall signing any promissory note." The appellant argued that "the lump sum we eventually received was back pay and spoken for (spent) before we got it." The appellant argued that "taking over \$500 off a single month's cheque has caused undue hardship and made us unable to pay rent." In his Notice of Appeal, the appellant wrote that the decision to deduct the amount has left his family, which includes small children, with a crisis as they have received an eviction notice and are facing eviction. The appellant argued that he is "fighting cancer and have no other income", "we have no savings or reserves" and his spouse is caring for young children and is not working. The appellant argued that "if repayment is required, it should be deducted in accordance with an amount that will not cause harm to our family each month."

Panel's decision

The appellant admits that, in November 2013, he was in receipt of a supplement for family bonus that had been delayed and that the delayed family bonus was paid to him in a lump sum in March 2014. Under Section 1 of Schedule B of the EAPWDR, all unearned income "must" be included in the calculation of net income unless it is specifically exempted. According to Section 10 of Schedule B, if a person in the family unit receives a backdated family bonus payment and all or part of the payment is attributable to one or more calendar months for which the family unit was also provided with a supplement, the *lesser* of two amounts must be treated as unearned income. The appellant did not dispute the amount that was considered as unearned income, but argued that he was not aware that the supplement provided for delayed family bonus had to be repaid and, if it had to be repaid, that it should be deducted in an amount each month that will not cause harm to his family.

The panel finds that the ministry reasonably determined that the appellant received a backdated family bonus payment and all or part of the payment was attributable to the calendar month for which the family unit was also provided with a supplement. Therefore, the amount determined under Section 10 of Schedule B as the lesser of the two amounts must be treated as unearned income and, given the directory language of Section 10, the ministry does not have the discretion to do otherwise. The panel finds that the ministry reasonably concluded that the net amount of the appellant's income under Schedule B (or \$504.51) must be deducted from the amount of assistance determined under Schedule A for the appellant's family unit and that, therefore, the appellant's disability assistance is reduced by this amount for the month of April 2014, pursuant to Section 24 of the EAPWDR.

Conclusion

The panel finds that the ministry decision was a reasonable application of the applicable enactment and confirms the decision pursuant to Section 24(2)(a) of the *Employment and Assistance Act*.